80-114

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

CURTIS R. WILHELM, and ESTELLE WILHELM,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE
~~UNITED STATES OF AMERICA,~~

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CURTIS R. WILHELM,
ESTELLE WILHELM,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No.

CURTIS R. WILHELM, and
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vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The petitioners Curtis R. Wilhelm and Estelle Wilhelm respectfully pray that a writ for certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered in this proceeding on May 8, 1980 and the actions of the lower Courts that led to this judgment be included in this revue.

MEMORANDUM FINDINGS BELOW

The decision of the Tax Court and the judgment order of the Court of Appeals, appears in the appendix hereto. No opinion was rendered by the Court of Appeals for the Third Circuit.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on May 8, 1980. This petition for certiorari was filed within 90 days of that date. This Courts jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals of the United States may deny the right of appeal by failing to hear the appellants, examine the record or correct the errors of the lower Courts and present an opinion on the issues properly brought before the Court.

2. Whether the State and Federal Courts may provide lawyers and Counsel special privileges that are denied regular citizens of the United States.

3. Whether the State of New York may seize the property of a defendant without a trial by jury, timely and proper hearing, correct venue, appearance of complainant, appointed counsel, attorney in fact, or the banks involved, and deny the right to appeal.

4. Whether the federal government may seize the property of a citizen by default, by denial of proper records and hearings, submission of evidence, proof of dishonesty or fraud or a trial in accordance with the law of the land and the rules of the Courts.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States,

Amendment I: . . . "or abridging the freedom of speech . . . and to petition the government for a redress of grievances."

Amendment IV: Searches & Seizures

Amendment V: . . . "nor be deprived of life, liberty, or property, without due process of law;"

Amendment VI: Speedy trial, public trial, jury trial, notice of charges, confrontation, compulsory process, Counsel.

Amendment VII: . . . "the right of trial by jury shall be preserved,"

Amendment VIII: . . . "nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Amendment IX: Construction of enumerated rights.

Amendment XIV: . . . "nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

There has been a seizure of petitioners property and undue taxes: (1) In April 1973 the petitioner was forced to sign an improper estate tax return in order to honor a contract and participate in a house closing. On this date counsel forceably closed the estate, seized unwarranted fees and undue taxes. On May 3, 1973 a corrected estate tax was filed. Access to Surrogate Court of New York State was denied. (2) On Feb. 1, 1978 the Supreme Court, County of Onandaga, State of New York entered a judgment seizing the funds of two bank books that remain properly in the possession of the petitioners. (3) On Nov. 6, 1978, the United States Tax Court entered a judgment denying a 1973 tax return that includes a theft loss and taxes paid on property and funds that have never been in the possession of the petitioners. This judgment upholds the illegal seizure of taxes and has been affirmed by the Court of Appeals in a judgment order entered May 8, 1980.

The question of the two bank books involved was raised by filing a corrected estate tax return on May 3, 1973 and in claims filed with the IRS in Nov. of the same year. The refusal of the IRS to acknowledge these claims led to the inclusion of this loss in the tax return filed properly in Jan. 1974. The 1973 tax return, due to outside interference, was improperly audited in May 1974 as a preview of a June audit on an improper estate tax return. An agreement was reached with the IRS on the estate return which was then partially denied. All appeals were then denied and the issues involved were taken to the U.S. District Court under Docket 75-449. The Court ruled on the two totten trusts, that were not before the Court

in this action, and advised that they were part of the residuary estate. The one other issue considered by the Court was ruled in favor of the petitioner and all other issues returned to the IRS for their handling. The action taken to correct the errors of the lower Court was taken to the Court of Appeals under Docket 76-1035 where all consideration was denied.

The audit of personal taxes in May 1974 denied the right to take deductions on almost all of the expenses and losses shown including the theft loss in question. A proposed agreement was reached with the IRS in Nov. 1974 in an administrative hearing. The proposed agreement and record of this hearing was never published or acknowledged and it became necessary to bring this matter to the attention of the Tax Court under docket No. 6850-76.

The plaintiffs in this proceeding and the petitioners herein, became plaintiffs by virtue of being made administrators, executors and sole heirs to an estate and filing their taxes in accordance with the instructions and rules supplied to them by the Dept. of the Treasury of the United States.

A memorandum filed by the Tax Court, denying these rights in regard to the theft losses, reads as follows:

MEMORANDUM

> "The deposits in the two Totten trusts would be included in decedent's residuary estate if petitioner proves that the establishment of the trusts was based on fraud or undue influence. *In Re Schmith's Estate* at 288. In this regard petitioner has failed. With respect to the trust created at the Dime Savings Bank

petitioner testified that the lawyers representing the decedent fraudulently persuaded the decedent to establish this account. Petitioners testimony consisted of conclusions relating to the question of fraud and was uncorroborated. None of the lawyers to whom petitioner refers testified nor did Silva Wilhelm or any representative of the Dime Savings Bank. It is well settled that the failure of a party to introduce evidence within his possession and which, if true, would be favorable to him, gives rise to the presumption that if produced it would be unfavorable. *Interstate Circuit v. United States,* 306 U.S. 208 (1939); *Wichita Terminal Elevator v. Commissioner,* 6 T.C. 1158, 1165 (1946), affd. 162 F.2d 513 (10th Cir. 1947). Moreover, even if petitioner established that the account with the Dime bank was fraudulently created, which he has not, he must additionally prove that there is no reasonable chance of recovery of the stolen item, i.e., the deposits of the account. As respondent correctly argues, a deduction under 165(c)(3) is not allowable until it can be determined that no recovery is reasonably certain. Section 1.165-1(d)(3), Income Tax Regs.; see *United States v. Rexach,* 482 F.2d 10 (1st Cir. 1973). In the instant case petitioner has retained the bank account book relating to the deposit with the Dime bank. The funds in this account have remained intact from the original deposit to the present time. Petitioner testified that he has instituted no action against Silva Wilhelm for the recovery of the Dime deposits. In addition, petitioner attempted to introduce various documents consisting of correspondence between himself and a number of attorneys, as well as representatives of respondent, relating to the probate and estate tax liability of de-

cedent's estate. This Court reserved ruling on the admissibility of these documents based upon respondent's position that the documents were hearsay, irrelevant, and immaterial. After a thorough examination of these documents which consist of exhibits numbered 5 through 129, 133 through 142, 148 and 149, we sustain respondent's objections.[3]

For these reasons we hold that petitioner has failed to prove that he incurred a loss due to theft under section 165(c)(3), and we therefore sustain respondent on this issue."

As a result of the foregoing memorandum the errors of the Tax Court were brought to the attention of the Court of Appeals under Docket 79-1261 and this Court without inquiry affirmed the decision of the lower Court.

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3. "Presumably respondent has abandoned his objection to the admissibility of exhibits numbered 48 and 122 (evidence of the two Totten trust accounts) for the reason that these two exhibits form the basis for his requested findings of fact. Accordingly, we admit these exhibits."

REASONS FOR GRANTING THE WRIT

1. The Decision below conflicts with the right of a fair hearing of Grievances brought on Appeal.

The denial of a pre-trial hearing unless there is a question on the issues presented leads to the conclusion that the issues were properly brought before the Court.

The failure of the Court to require the review of the record leads to this appeal to the Supreme Court under 28 U.S.C. §1254(1).

These conflicts justify the grant of certiorari to review the judgment below.

2. The Decision below raises significant and recurring problems concerning the ability of attorneys to prepare or present a case based on the factual evidence and records in a Pro-Se Case where there is no constituency.

This case emphasizes the tendency to settle cases out of Court and has led to continual postponement, neglect, outside solicitation of the Court, and settlement by the attorneys without the inclusion of the principals involved. The rules of the Court in regard to timeliness do not apply to Counsel and equal representation is denied. The general violation of Court Rules has led to the appeal before this Court.

The petitioners have diligently sought Counsel and will continue to seek Counsel in this proceeding. The unavailability and denial of the petitioners rights to Counsel has denied proper accessibility to the Court.

This conflict of interest justifies the grant of certiorari to review the judgment below.

3. The Decisions below fail to take into account the actions taken to establish ownership and protect the property of the Estate and the Petitioners.

Every possible step available was taken by the Executor, Administrator and Designated Recipient of a total Estate, in a period of over five years prior to the property seizure, to establish ownership under the law. Some of the actions included bringing original lawyers before the Suffolk County and New York State Bar Association, forwarding the record to the Attorney General of New York State, Filing proper claims with the IRS, Filing 1973 income tax, Answering audits and appealing for administrative review, calling attention of U.S. Attorney, Brooklyn, N.Y., Attorney General of the U.S., U.S. Senate, U.S. House of Representatives, filing appeals in the District Court, Tax Court and the Court of Appeals of the United States.

The improper seizure was fought as a defendant in the New York Supreme Court, Syracuse, N.Y. and in New York County under Docket's 77-5273, 5274 and 78-1755.

The intentional disregard of all options and considered malfeasance and fraud has led to this presentation.

These conflicts justify the grant of certiorari to review the judgment below.

4. The failure of government agencies to listen and carry out their obligations under the law has caused a denial of justice.

The Courts must take the word of the agencies that create administrative law and enforce it and these edicts must be upheld by the Courts that represent them. A minor unjustified claim by the IRS may cause great losses

to a citizen including a major loss of time and money and can go unresolved for over seven years without any effort on the part of anyone in the government to resolve the problems involved. This has led to all appeals to the Courts being ignored or returned to lower Courts and agencies.

There will be no review unless there is some new or outstanding issue involved that is of interest to the Court. (Stern & Gressman, Supreme Court Practice, including p466, 6.29/ The petition for ceritorari—content of the "Statement of the Case.")

The long faulty record in this case is now filed in the Court of Appeals of the United States for the Third Circuit.

Finally, the correctness of the decision below, even assuming the propriety of the statutory tests employed, is open to serious question. The record shows quite plainly that there is no intention to avoid paying taxes, but only a sincere desire to protect the property of the petitioners and recover a portion of the losses that have occurred in the denial of due process of law. The refusal of the Third Circuit to respect the facts and issues presented and the failure to review the record cannot be justified.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Third Circuit.

Respectfully submitted,

CURTIS R. WILHELM
ESTELLE WILHELM
Appearing Pro-Se
80 Western Boulevard
Gillette, New Jersey 07933

July 25, 1980

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1261

CURTIS R. WILHELM and
ESTELLE WILHELM,

Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE

APPEAL FROM A DECISION OF THE UNITED STATES TAX COURT

DOCKET NO. 76-6850

Submitted Under Third Circuit Rule 12(6)
May 1, 1980

Before: ADAMS, VAN DUSEN and HIGGINBOTHAM,
Circuit Judge.

JUDGMENT ORDER

After considering the contentions raised by the appellants, it is

ADJUDGED AND ORDERED that the decision of the Tax Court, explained in an opinion reported at 37 T.C.M. 1847-2, be and is hereby affirmed.

Each side to bear its own costs.

BY THE COURT,
/s/ Arlin M. Adams
ARLIN M. ADAMS
Circuit Judge

ATTEST:

/s/ Thomas F. Quinn
THOMAS F. QUINN
Clerk

DATED: May 8, 1980

Certified as a true copy and issued in lieu of a formal mandate on May 30, 1980.

Test:

/s/ Francis R. Matipik
FRANCIS R. MATIPIK
Deputy Clerk,
United States Court of Appeals
for the Third Circuit

APPENDIX B

UNITED STATES TAX COURT

WASHINGTON

DOCKET NO. 6850-76

CURTIS R. WILHELM and
ESTELLE WILHELM,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of this Court as set forth in its MEMORANDUM FINDINGS OF FACT AND OPINION filed November 6, 1978, it is

ORDERED and DECIDED: That there is a deficiency in tax due from petitioners in the amount of $1,658.30 for the taxable year 1973, and an addition to tax due in the amount of $82.92.

/s/ William A. Goffe
WILLIAM A. GOFFE
Judge

Enter: Nov. 6, 1978

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 80-114

In the Supreme Court of the United States

OCTOBER TERM, 1979

CURTIS R. WILHELM AND ESTELLE WILHELM, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 80-114

CURTIS R. WILHELM AND ESTELLE WILHELM, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In this federal income tax case, petitioner[1] seeks review of the decision below disallowing a theft loss deduction with respect to funds in two savings accounts that were established by his father.

The pertinent facts may be summarized as follows: Petitioner is the son of the late George J. Wilhelm, who died testate on August 14, 1972 (37 T.C.M. 1847-2, 1847-3).[2] Under the terms of the will, petitioner received one half of the decedent's residuary estate. Prior to his death,

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[1]References to petitioner are to Curtis R. Wilhelm. Estelle Wilhelm is a party solely because she filed a joint return with her husband for the year at issue.

[2]Petitioner has not reproduced the opinion of the Tax Court in the appendix to the petition. Our references to that opinion are to the unofficial CCH report.

petitioner's father had established two savings accounts, each of which was entitled "George J. Wilhelm In Trust For Silva Wilhelm" (37 T.C.M. at 1847-3).[3] Upon the decedent's death, the funds in these accounts, which totaled $13,500, passed to Silva Wilhelm and thus were not part of the decedent's residuary estate (37 T.C.M. at 1847-6).

On their 1973 federal income tax return, petitioners claimed a theft loss deduction in the amount of $13,500 with respect to these funds. In support of the claimed deduction, petitioners asserted that they were the rightful owners of the funds because one of the savings accounts had been established by the decedent as a result of fraud by either Silva Wilhelm or the decedent's attorneys and that Silva Wilhelm was not entitled to the proceeds of the other account because she had received an equal sum from the decedent during his lifetime (37 T.C.M. at 1847-6 to 1847-7). In this proceeding brought by petitioners in the Tax Court for redetermination of the deficiencies, the Tax Court upheld the Commissioner's disallowance of the claimed deduction, ruling that petitioners had failed to establish that they were the rightful owners of the funds in question (37 T.C.M. at 1847-6). The court of appeals affirmed (Pet. App. 1a-2a).

The courts below correctly ruled that petitioners were not entitled to the claimed theft loss deduction. Section 165 of the Internal Revenue Code of 1954 (26 U.S.C.) allows a deduction for losses arising from theft, as defined by state law, in the year in which the loss is discovered, provided that no claim for reimbursement or reasonable prospect for recovery exists in that year. Treasury

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[3]Silva Wilhelm was married to Gilbert E. Wilhelm, a son of the decedent who predeceased the decedent (37 T.C.M. at 1847-3).

Regulations on Income Tax, Section 1.165-1(d)(3) (26 C.F.R.); *Bellis* v. *Commissioner*, 540 F. 2d 448 (9th Cir. 1976). Here petitioners failed to establish that they were the rightful owners of the funds in the savings accounts in question and did not establish that any theft had occurred under state law. They also failed to show that there was no reasonable prospect of recovering the funds during the year in question (see 37 T.C.M. at 1847-6 to 1847-7). In these circumstances, they were not entitled to a theft loss deduction.[4]

It is therefore respectfully submitted that the petittion for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

AUGUST 1980

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[4]Petitioners err in contending (Pet. 8) that the court of appeals' failure to hear oral argument violated their "right of a fair hearing." The court determined that oral argument was not needed in this case only after the observance of a careful procedure designed to safeguard due process. See *NLRB* v. *Local No. 42, Int. Ass'n of Heat & F.I. & A. Wkrs.*, 476 F. 2d 275 (3d Cir. 1973). Moreover, there is no constitutional requirement that oral argument be heard in every case in the courts of appeals. *FCC* v. *WJR*, 337 U.S. 265, 274-277 (1949).

Petitioners also assert (Pet. 8) that their constitutional rights were violated because they were unable to obtain the assistance of counsel in the Tax Court. It is well established, however, that the constitutional right to counsel applies only to criminal proceedings and not to civil suits such as a Tax Court proceeding. See, *e.g.*, *Brewer* v. *Williams*, 430 U.S. 387, 398 (1977).

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONERS

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Docket 75-449, Review Court of Appeals
for the Third Circuit No. 76-1035 1

Wilhelm, Silva v. Bowery, Dime Savings Bank and
Curtis R. Wilhelm,
New York Supreme Court, Civil Action 77-5273,
5274, Review New York County No. 78-1755 1-2

U.S. CONSTITUTION CITED:

Amendments 1, 4, 5, 6,
7, 8, 9, and 14 2

CODE CITED:

Section 165 of the Internal Revenue Code of
1954 (26 U.S.C.) 2

IN THE

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OCTOBER TERM, 1979

No. 80-114

CURTIS R. WILHELM
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Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE

REPLY MEMORANDUM FOR THE PETITIONERS

This is the Reply of the Defendants and Petitioners, who are still without Counsel and forced to proceed Pro Se, to the careless and untimely Opposition Memorandum.

The memorandum forwarded by the Solicitor General is outrageous, untrue, and could only be based on hearsay as it is evident that the last will and testament of George J. Wilhelm has never been read, the dates of the will and the time related Totten Trusts never checked or access provided to the record in Newark, N.J. under *Wilhelm, Estate of v. United States,* entire record, briefs, orders, opinions, transcripts, Docket 75-449, Review Court of Appeals for the Third Circuit No. 76-1035; the New York State record in Syracuse, N.Y. under *Wilhelm, Silva v. Bowery, Dime Savings Bank and Curtis R. Wilhelm,* New

York Supreme Court, Civil Action 77-5273, 5274, and Review in New York County under 78-1755; or the record in the Court of Appeals, Philadelphia, Pa. under *Wilhelm, Curtis R. and Estelle v. Commissioner*, Civil Action 6850-76 Review Court of Appeals for the Third Circuit No. 79-1261. The frivolous and improper answer to the Supreme Court does not even bother to take into account the issues before the Court or the Constitutional rights covered by Amendments 1, 4, 5, 6, 7, 8, 9, and 14 and the eight years of hell that have been supplied by the IRS in the illegal confiscation of the Defendants Property, but the solicitor general can make a fool out of the petitioner in a memorandum that if it were true would not have gotten beyond the first illegal conference called by the IRS.

The only true statement in the memorandum is: "Section 165 of the Internal Revenue Code of 1954 (26 U.S.C.) allows a deduction for losses arising from theft, as defined by state law, in the year in which the loss is discovered provided that no claim for reimbursement or reasonable prospect for recovery exists in that year."

The Tax Court under recent decisions such as *Greenberg's Express, Inc. v. Commissioner*, 62 TC 324 (1974) can no longer provide a hearing, allow interrogatories, or the presentation of evidence, unless there is approval by the IRS. This is in order to protect the illegal outside sources such as informants, bag people, bounty hunters, and dishonest lawyers with special access to the IRS. This is true even if the evidence is fraudulent and the IRS is given a license to steal by extortion and confiscation without any recourse, for the IRS does not have to allow a stipulation of facts, or present a case as the defendants or appellants are guilty until proven innocent and may not defend themselves before the Tax Court or The Court of Appeals of the United States in accordance with our Bill

of Rights. See Docket No. 6850-76 and Docket No. 79-1261.

It is therefore respectfully submitted that the Petition for a Writ of Certiorari should be granted.

/s/ Curtis R. Wilhelm
CURTIS R. WILHELM

/s/ Estelle Wilhelm
ESTELLE WILHELM
Appearing Pro Se

September 1980